



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

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CHICAGO, IL 60604-3590

JUL 02 2009

REPLY TO THE ATTENTION OF:

E-19J

Ms. Elizabeth Orlando
OES/ENV Room 2657
U.S. Department of State
Washington, DC 20520

Re: Final Environmental Impact Statement for the Alberta Clipper Pipeline Project, North Dakota, Minnesota, Wisconsin [CEQ# 20090180]

Dear Ms. Orlando:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the United States Environmental Protection Agency (EPA) has reviewed the Department of State's (DOS) Final Environmental Impact Statement (FEIS) for the Alberta Clipper Pipeline Project. Our review of this FEIS has focused on the response to our comments on the Draft Environmental Impact Statement (DEIS) as documented in our January 30, 2009, letter.

The proposed project by Enbridge Energy, Limited Partnership (Enbridge) is to construct and operate an underground crude oil pipeline from Hardisty, Alberta, Canada to Superior, Wisconsin. The FEIS focuses only on that portion of the project within the borders of the United States. The Proposed Action would result in the placement of approximately 326.9 miles of new 36-inch-diameter pipe, installation of 32 mainline valves and upgrades at three existing pumping stations from the U.S.-Canada border near Natchez, North Dakota, crossing Minnesota to the Clearbrook Terminal and continuing on to Enbridge's existing terminal in Superior, Wisconsin. In addition, approximately 183 miles of 20-inch-diameter pipeline (Southern Lights Diluent Pipeline) between the Clearbrook and Superior Terminals would be installed during the same construction season and substantially next to the Alberta Clipper Pipeline. Enbridge also proposes to expand its existing Superior, Wisconsin terminal (the Superior Terminal Expansion Project) by constructing 5 new tanks and installing a new pump station and associated equipment to accommodate the crude oil delivered by the Alberta Clipper Pipeline.

EPA, in our role as a cooperating agency, provided DOS with input on defining the purpose and need, determining the range of alternatives, identifying connected actions, and scoping the environmental analysis to be documented in the DEIS. We provided comments on the DEIS in a letter dated January 30, 2009. We rated the DEIS as "EC-2" (Environmental Concerns – Insufficient Information). We expressed concerns regarding impacts to water resources (including

wetlands), agricultural land, and forests. We recommended the FEIS include additional information regarding resource impacts, alternatives and mitigation. We also advised on the St. Regis Paper Company Superfund Site and our responsibilities under the Clean Water Act (CWA). In our overall review of the FEIS, we found that the majority of our concerns on the DEIS have been addressed by DOS or will be further addressed during the permitting phase of the pipeline project.

We appreciate that the FEIS includes Environmental Mitigation Plans for each of the three states and an Agricultural Mitigation Plan. EPA is also pleased that the project proponent will encourage construction contractors to utilize strategies to reduce diesel emissions. We continue to encourage Enbridge to consider implementing voluntary upland forest mitigation. This suggested mitigation would be in addition to Enbridge's commitment to enhance existing riparian forest in Minnesota by planting woody species between the newly installed and existing Enbridge pipelines to the nearby tree line or up to 50 feet from the ordinary high water mark.

We commend Enbridge for working with the Wisconsin Department of Natural Resources (WDNR) and the Fond du Lac Tribe (FDL) since issuance of the DEIS to identify and analyze additional route alternatives and route variations. This has led to the identification of an FEIS preferred alternative that includes a route through the Fond du Lac Reservation that follows the existing right of way with reduced impacts to less disturbed areas, including wetlands. In addition, the FEIS preferred alternative route now includes a new Nemadji Golf Course route in Wisconsin, which avoids known high quality wetlands areas. However, we note that while the total acres of impacted wetlands is reduced from the DEIS, a greater number of acres will be undergoing permanent conversion from shrub or wooded wetlands to herbaceous wetlands, an estimated increase of 120 acres, up to a total of 820 acres. This will entail the need for additional acres of compensatory mitigation in the Clean Water Act (CWA) Section 404 permitting process. The number of stream crossings has also increased, from 151 to 203 water body crossings. It will be important to make full use of the local expertise of state and tribal agencies. We advise Enbridge to continue to share information and work with the state, federal and tribal agencies to identify and implement further measures to reduce and compensate for impacts to resources of concern.

Consistent with our previous comments regarding impacts, mitigation and permitting responsibilities, we offer some additional comments that we believe should to be addressed by the DOS in the Record of Decision (ROD).

The U.S. Army Corps of Engineers' (Corps) Public Notice review period for the proposed CWA Section 404 and Rivers and Harbors Act Section 10 permits for this project is running concurrently with the FEIS review period. We understand that the FEIS does not reflect some of the currently proposed approaches to refined project construction in Wisconsin, including horizontal directional drilling (HDD) for crossing portions of the Pokegama River and Pokegama-Carnegie wetland complex. We recommend the Record of Decision (ROD) identify these refined project construction approaches. EPA will be making additional detailed programmatic and technical concerns known through the CWA Section 404 process. This

includes our responsibility for evaluating CWA Section 401 water quality certification for proposed impacts to wetlands and waters of the United States within and adjacent to the Leech Lake Indian Reservation. We recommend the ROD clarify that EPA does not give 401 certification for the Chippewa National Forest, as identified in Appendix M, Table 1. In addition, we recommend the ROD acknowledge that Appendix M, Table 1 should have mentioned the Fond du Lac Tribe's role in the Section 401 water quality certification process within the exterior boundaries of the Tribe's reservation.

EPA will also be making our National Pollutant Discharge Elimination System (NPDES) CWA 402 permit decisions, as necessary, for discharge of hydrostatic test waters for the Leech Lake Reservation. At this time, there are no hydrostatic test water discharges proposed for the Fond du Lac Reservation. If it is determined in the future that a discharge would be needed for the Fond du Lac Reservation, then Enbridge would have to apply to EPA for a Section 402 NPDES permit. We recommend this information be identified in ROD.

While the FEIS identifies that the proposed pipeline location may be out of the contaminated soil area associated with the St. Regis Paper Company Superfund Site (Site), it may well be within the Site's groundwater plume. EPA staff have been working with the Enbridge's contractors, Natural Resources Group, on work plans for an investigation of that portion of the pipeline that will probably encounter the northern portion of the groundwater contaminant plume of the Site. At this time, EPA has not received a final work plan for the plume investigation. Our concerns are with worker safety during excavation and with the potential for the pipeline trench to act as a conduit for contaminant groundwater flow eastward to nearby Cass Lake. Cass Lake is the source of wild rice and fish for the local Leech Lake Reservation tribal population as well as one of the most popular recreational fishing lakes in Minnesota. We recommend the DOS adequately address these concerns in the ROD.

In our DEIS comments, EPA recommended that the FEIS include one overarching Impacts/Mitigation Summary Table (Table) that identifies and quantifies (where feasible) all impacts associated with the proposal and details the mitigation that has and will be undertaken to avoid, minimize and compensate for those impacts identified throughout the document. We advised that the Table be included in the Executive Summary Chapter and Chapter 5 (Conclusions and Mitigation) of the FEIS. We made this recommendation with the intent that the Table would serve to assist the reader in keeping track of the proposals' impacts and proposed mitigation while reading the NEPA document. We did not intend that the Table be a substitute for the detailed analysis and write-up in the FEIS. We believe this type of reference table is a valuable tool in that it provides the lead agency, the resource agencies, and the public with an aid that allows them to more easily keep track of a proposal's impacts and proposed mitigation while reading through the EIS. This is particularly important when there is very limited time to review the volumes of information that accompany pipeline FEISs.

If you have any questions regarding our comments, please contact Virginia Laszewski, lead reviewer to this project, at (312) 886-7501 or at laszewski.virginia@epa.gov. We request copies of DOS' Record of Decision (ROD), as soon as it is available.

Sincerely,



Kenneth A. Westlake
Supervisor
NEPA Implementation
Office of Enforcement and Compliance Assurance

cc: Larry Svoboda /Melanie Wasco, EPA, Region 8, Denver, CO
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